IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.957 OF 2004

...

The Indian Airlines Ltd. ...Petitioner

v/s.

The Regional Secretary-
Air Corporation Employees
Union & Anr. ...Respondents

...

Mr.R.S. Pai i/b Sanjay Udeshi & Co. for the Petitioner.

Mr.K.S.Bapat i/b N.G.Helekar for the Respondents.

AND

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3364 OF 2004

...

Shri H.M.Mahamunkar ...Petitioner

v/s.

The Regional Secretary-
Air Corporation Employees
Union & Anr. ...Respondents

...

Mr.K.S.Bapat i/b N.G.Helekar for the Petitioner.

Mr.R.S.Pai i/b Sanjay Udeshi & Co. for the Respondents.

...

CORAM: D.K.DESHMUKH, J.

DATED: 31ST JULY, 2006

P.C.:

1. Writ Petition No.957 of 2004 is filed by the Employer and Writ Petition no.3364 of 2004 is filed by the employees. The employee was engaged by the employer as a loader. Employer is an Airline. Charge was of theft, while working as a loader. Admitted position is that in the same incident three employees were involved. Charge-sheet was the same

as against all the three employees. Departmental enquiry was held against all the three employees. In relation to two employees punishment of removal from service was imposed and in relation to one employee lesser punishment of withholding of two increments was imposed. Reference under the Industrial Disputes Act was made. The Reference Court held the enquiry to be proper and legal and also held the finding of the enquiry officer to be legal and proper. However, under Section 11(a) of the Industrial Disputes Act the Reference Court held that the punishment is disproportionate mainly because the other employee involved in the same incident was not removed from the services, but was continued in service. The Labour Court, therefore, granted reinstatement in service, but without back wages and also imposed the punishment of withholding two increments.

2. The employer has challenged Part-II of the award whereby the reference Court has interfered with the punishment, whereas the employee has challenged Part-I of the award, whereby the Reference Court has held that the enquiry was legal and proper and the findings of the enquiry officer were also proper.

3. Now, taking first the petition filed by the employer, it is an admitted position before me that all the three employees were involved in the same incident. On two punishment of removal was imposed and on one different punishment of withholding two increments was imposed. It is also an admitted position before me that so far as the second employee by name Mr.Satam is concerned, he is also removed from services, but subsequently pursuant to the settlement reached the employer has reemployed him and he has been given his job back. The net result now is out of three employees who were involved in the same incident, two have got their jobs back, whereas it is only the present employee who stands removed from services. One can understand the case where the employer says that considering the charge that is proved and the nature of the work that is to be performed, the employer does not want the employee back in service. But once the employer gives up this stand, and agrees to have two of the three employees in his employment, in my opinion, he is not justified in saying that the Reference Court has committed a grave error in granting reinstatement to the employee without back wages and withholding of two increments. Admittedly, the misconduct of Mr.Satam and the

present employee was identical. Mr.Satam had been reemployed by the management. Whereas by the impugned order the present Petitioner has been granted reinstatement without back wages and his two increments have also been withheld. The similarity between the two employees is that both have got their job back. The only difference is that the present Petitioner gets continuity in service, whereas Mr.Satam does not get continuity in service. I do not find that the order of the Reference Court has resulted in any failure of justice so as to enable this court to interfere with the same in its extra ordinary jurisdiction. On the contrary the industrial court has done justice between the parties.

4. So far as petition of the employee is concerned, he challenges that part of the order of the Reference Court which denies him backwages.

5. In my opinion, in the facts and circumstances of the case, the view that has been taken by the Industrial Court, as observed above, results in doing justice between the parties. As the employee has been found guilty of the charge levelled against him,

in my opinion, the Reference Court was justified in withholding backwages of the employee. In any case, the other employee involved in the same incident Mr.Satam has also not got any backwages and he has been given only reemployment.

6. Taking overall view of the matter, therefore, there is no reason to interfere with the award of the Reference Court. Both the Petitions fail and are dismissed. Rule discharged with no order as to costs.

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